

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §122.10, concerning General Definitions, §122.130, concerning Initial Application Due Dates, §122.134, concerning Complete Application, §122.201, concerning Initial Permit Issuance, §122.501, concerning General Operating Permits, §122.503, concerning Application Revisions for Changes at a Site, §122.504, concerning Application Revisions When a General Operating Permit is Revised or Repealed, §122.506, concerning Public Notice for General Operating Permits, §122.508, concerning Notice and Comment Hearings for General Operating Permits, and new §122.509, concerning Public Announcement for General Operating Permits, and new §122.510, concerning General Operating Permits Adopted by the Commission.

EXPLANATION OF THE PROPOSED RULES

This proposal would establish new procedures for developing general operating permits (GOPs) under 30 TAC Chapter 122, concerning Federal Operating Permits. This proposal will also amend the Chapter 122 full program application schedule for GOPs. Chapter 122, the state regulation that implements the Federal Operating Permits Program in Texas, was originally adopted September 20, 1993, and revised to be effective November 10, 1997. Chapter 122 is based on Title 40 Code of Federal Regulations Part 70 (40 CFR 70), which was promulgated by the United States Environmental Protection Agency (EPA) to establish the minimum elements of the federal operating permits program, as required by Title V of the Federal Clean Air Act Amendments of 1990 (FCAA). The goal of the federal operating permits program is to provide a compliance and enforcement tool by codifying all applicable requirements for the control of air pollution at a specific site into an operating permit.

General operating permits are an alternate permitting mechanism provided for in Chapter 122, consistent with 40 CFR 70 requirements that authorize the operation of multiple sites that are similar in terms of operations, processes, and emissions. For the Chapter 122 interim program, four GOPs were developed for oil and gas industry sites and one GOP was developed for the bulk fuel terminal industry sites. These GOPs currently reside in §§122.511 - 122.515, respectively. One GOP was developed for the Chapter 122 full program and is available to owners or operators of sites that have only site-wide requirements. This GOP resides in §122.516. These GOPs have so far been a very successful mechanism for streamlining the permitting of certain sites subject to Chapter 122.

The existing GOPs are permits by rule and were adopted through the rulemaking process consistent with the requirements of the Texas Administrative Procedure Act (APA) and 40 CFR 70, which require a 30-day public comment period including an opportunity to request a notice and comment hearing, an affected state review, and a 45-day EPA review. In addition, a 60-day public petition period, during which the public may petition EPA to object to a permit, begins after the 45-day EPA review period and may extend after permit issuance. These procedural requirements were satisfied when the GOPs were adopted. Subsequently, each time an applicant applies for authorization to operate under a GOP, the executive director need only review the application to ensure that the site qualifies for the GOP. Individual applications are then not subject to public notice, affected state review, EPA review, and public petition requirements, since these procedural requirements occurred during the rulemaking process. These individual applications, however, are subject to the Texas Clean Air Act procedural requirement to submit a notice of the application to the state senator and representative who represent the area in which the site is or will be located.

The purpose of the operating permits program is to codify applicable requirements. Applicable requirements may periodically be revised, repealed, or updated. For example, the EPA may revise new source performance standards (NSPS), national emission standards for hazardous air pollutants (NESHAPS), and maximum available control technology (MACT) standards. The commission periodically revises the reasonably available control technology (RACT) standards (e.g., 30 TAC Chapters 111, 112, and 115). Facilities operating under GOPs would be required to comply with the revised applicable requirements by writing provisional terms and conditions, even though the revised applicable requirements have not been codified into the GOP through rulemaking. This situation can cause confusion for regulated industries, the public, and commission enforcement personnel, since the language in the GOP (which is currently in a rule) would necessarily lag behind any recent revisions to the applicable requirements codified in the GOP. Since GOPs currently reside in Chapter 122, it takes a second rulemaking and, at a minimum, four to six months to revise the GOP. By authorizing the executive director to amend a GOP, the commission can more quickly update permits and omit a second rulemaking. For example, once an update to a GOP is completed, the applicable requirements may have been again revised and the new GOP will not reflect all current applicable requirements. By removing the GOPs themselves from Chapter 122 and authorizing the executive director to revise a GOP, the GOPs can be quickly updated, thereby eliminating a significant time delay in incorporating revisions to the codified applicable requirements. This will assist the regulated industries, since they will not have to maintain provisional terms and conditions for lengthy periods of time. Resources that would be dedicated to revising the rules through the formal rulemaking process can be directed to review of applications. The commission emphasizes that this proposal will not eliminate opportunity for public comment on proposed changes in the underlying applicable requirements since such changes,

whether done on a state or federal level, are made using the traditional rulemaking process. Further, the proposed rule establishes a process for the revision of the GOPs by the executive director which is similar to the process used for revisions to site operating plans.

As the result of concern over the amount of rulemaking involved in maintaining GOPs, the commission is proposing new procedures for establishing GOPs. These procedures are similar to those for the Texas Pollution Discharge Elimination System general permits in that they provide for GOPs that do not involve rulemaking. The proposed amendments allow the executive director to issue GOPs and will remove the requirement for GOPs to be adopted by the commission through rulemaking. This would allow the executive director to quickly issue and revise GOPs without spending time and resources in rulemaking. As a result, the commission will be better able to maintain a current set of applicable requirements in the GOPs. Although this proposal would eliminate rulemaking steps involved in establishing and revising GOPs, the GOPs will continue to be subject to all Chapter 122 procedural requirements. The authority for the GOPs will continue to reside in Chapter 122, Subchapter F. Before issuance by the executive director, the GOP will undergo Chapter 122 procedural requirements, including a 30-day public comment period with an opportunity to request a notice and comment hearing, an affected state review, and a 45-day EPA review. The GOPs will also be subject to a 60-day public petition period, during which the public may petition EPA to object to a permit. Although the specific public notice procedures and notice and comment hearing procedures may vary slightly due to the GOPs being an alternate permitting mechanism, these are the same Chapter 122 requirements applied to site-specific operating permits. This approach will change the commission's procedures for establishing and maintaining GOPs, but will not significantly affect

application for and operation under a GOP. If adopted, the proposed procedures will authorize the executive director to establish permits governing multiple similar sites through procedures almost identical to those used for site-specific operating permits.

The proposed rule changes will provide new procedures for establishing GOPs; however, they will not change or repeal any of the current GOPs residing in Chapter 122. This proposal provides the authority for the executive director to issue GOPs and is the first of three steps necessary for the conversion of the GOPs currently contained in Chapter 122, Subchapter F into those issued by the executive director. Once this authority is in place, the executive director will use the new procedures to propose GOPs that will replace those currently residing in Chapter 122, Subchapter F. After the new GOPs have been issued, those in Subchapter F will be repealed.

The change to §122.501(a) would give the executive director authority to issue a GOP. Throughout the proposal, the term “adoption” would be replaced with the term “issuance.” The commission proposes to delete references to the Government Code, APA, and Chapter 2001 or 2002 from §122.501(a)(6) and everywhere else it appears in Subchapter F, because these procedures refer to rulemaking. The language in §122.501(b) would be revised to be consistent with the wording in Chapter 122, Subchapter C, concerning Initial Permit Issuances. Section 122.501(d) would be revised to authorize the executive director to revise a GOP and would establish procedures to revise or rescind a GOP. The proposed language establishes requirements for issuing administrative, minor, and significant permit revisions to GOPs, which are consistent with the requirements in Subchapter C for

site-specific permits. Current GOP procedures do not distinguish between administrative, minor, and significant permit revisions, because all revisions to GOPs are subject to rulemaking requirements.

The commission proposes to change language in §122.503(a)(1), as well as in §122.504(a)(1)(B), to indicate that a change in an applicability determination may result in the permit holder having to submit an updated GOP application. These applicability determination changes may be the result of a change at a site or the revision, repeal, or rescission of a GOP. The word “original,” used in describing the GOP application, would be deleted from §122.503(a)(1) because after the application has been updated, the original application would no longer be used to verify applicability determinations. The same change is proposed for §122.503(d) and §122.504(g). The current §122.503(a)(2) requires that the GOP application must be updated to account for any typographical errors. This paragraph would be deleted, because the only portions of the GOP application that must be kept up-to-date are the applicability determinations and the basis for those determinations. Any typographical errors or other types of changes in those portions of the application that address applicability determinations are already addressed under §122.503(a)(1). In §122.503(c)(2) and (3), the term “updated application” is proposed to replace the phrase “information required in subsection (b) of this section” and reduce internal references within §122.503. Furthermore, in §122.503(c)(4), the phrase “application required by this subsection” has been replaced with “updated application” for simplicity. Section 122.503(g) refers to “the emission units addressed in the authorization to operate”; however, since the specific emission units are actually addressed in the application rather than the authorization, “authorization to operate” would be replaced with “application.” The same change is proposed in §122.504(b).

The current §122.504(a) bases applicability of the section on whether or not the permit holder's authority to operate under a GOP is affected by the revision or repeal of a rule (applicable requirement). In an effort to more clearly define when these requirements apply, the commission proposes to directly state under what circumstances the permit holder's authority can be affected. The permit holder's authority will be affected if the applicability determinations at a site or the basis for the determinations change. This subsection also refers to the revision or repeal of a rule and applies when a rule codified in a GOP is revised or repealed. It will also provide clarity relating application revisions that are necessary due to a revision or rescission of a GOP. Additionally, this proposal would revise the subsection to apply to GOPs that no longer reside in §§122.511 - 122.515. In subsection (a)(1), the word "must" is proposed to be replaced with "shall" and the adjective "updated" would be added to the reference to the permit application for consistency with §122.503.

Section 122.504(a)(2) currently states that an application containing information required under §122.504(a)(1) must be submitted by the effective date of the revised or repealed GOP. However, the current §122.504(a)(4) states that §122.504(a)(1) information shall be submitted within 45 days of the compliance date of the new requirement or effective date of the repealed requirement. Since a GOP is a codification of applicable requirements, new or repealed requirements will be in effect before the GOP can be revised to reflect these requirements. Therefore, the information relating to new or repealed requirements will be submitted before the GOP becomes effective. The application deadline in §122.504(a)(2) is then no longer relevant and would be deleted. The requirements of §122.504(a)(4) would also be moved to §122.504(a)(3) and revised to clarify that the specified requirements apply

when a revision to a GOP is the result of a change in an applicable requirement or state-only requirement. The requirements in this paragraph would also be subdivided for purposes of clarity. The proposed §122.504(a)(3)(B) would replace the citations listing all the application information with “updated application” to avoid unnecessary internal references. A new §122.504(a)(4) is proposed to address the situation in which a revision to a GOP is not the result of a change in an applicable requirement or a state-only requirement. For example, this paragraph would apply if a GOP were revised to include periodic monitoring requirements or to correct a mistake. In this case, the permit holder would submit an updated application within 45 days of the effective date of the revision. The current §122.504(c) addresses the repeal of GOPs and the current §122.504(d) addresses both the revision and repeal of GOPs. For clarity, the language in these sections would be revised so that §122.504(c) addresses rescission of a GOP and §122.504(d) addresses revisions. Consistent with the current requirement to submit an application by the effective date of the GOP, the commission proposes that a permit holder who no longer qualifies for a GOP as a result of revision or rescission must submit an application for another operating permit by the effective date of the rescission or revision. Language in §122.504(d) regarding the intent of the permit holder to operate under the GOP would be deleted because this section addresses procedures required as the result of changes to rules or GOPs and not decisions by the permit holder to change the way in which a site is operated.

Throughout §122.506, references to “proposed” in describing the draft general operating permit would be deleted because this term is used to describe a stage in the rulemaking process. The current §122.506 was written to account for the rulemaking process, which requires a hearing for the adoption of, or revision to, any GOP. However, if a GOP was issued by the executive director consistent with

the public notice requirements for issuing site-specific permits in Chapter 122, Subchapter D, a hearing could be held if requested, but would not always be required. Therefore, revisions to §122.506(a) and a new §122.506(b) are proposed to include the public notice requirements for GOPs issued by the executive director and to allow a hearing to be requested consistent with the site-specific requirements. The proposed revision to §122.506(a) will also include the procedures for public notice for newly issued GOPs, significant revisions to GOPs, and rescissions of GOPs. The notice of a draft GOP will be published in the *Texas Register*, on the commission's publicly accessible electronic media, and in a newspaper of general circulation within each of the following metropolitan areas: Beaumont, Houston, and Fort Worth. These newspapers were selected since they are commonly used by the commission to provide notice for rulemaking. Additional notice may be provided, as determined by the executive director, in a newspaper of largest general circulation in the metropolitan area appropriate for the draft general operating permit. The commission believes that publication in the *Texas Register*, on the commission's publicly accessible electronic media, and newspaper notices will provide ample notice to the regulated community and general public concerning the issuance, revision, or rescission of GOPs. Amendments to §122.506(b) would require that a GOP and any associated notices be made accessible to local air pollution control agencies, consistent with Subchapter D.

Throughout §122.508, references to "proposed" in describing the draft general operating permit would be deleted, because this term is used to describe a stage in the rulemaking process. Section 122.508 would be amended to state that a hearing need not be held if it is not requested. Again, the proposed language is consistent with the notice and comment hearings requirements in Subchapter D.

The proposed new §122.509 would establish requirements for public announcement of minor permit revisions to GOPs. Consistent with the revision requirements in Subchapter C, minor permit revisions to GOPs will be subject to public notice requirements. The public announcement requirements in Subchapter D could not simply be referenced, because they include requirements that apply to specific permit applications, and the GOP public announcement requirements must be generic enough to account for all authorization granted under the GOP. Except for the application specific or site-specific requirements, all public announcement requirements in Subchapter D have been included in §122.509.

The proposed new §122.510 would keep GOPs issued under the APA in effect until they are repealed through rulemaking. This section would also state that an authorization to operate under a GOP adopted by the commission that is replaced with a GOP issued by the executive director will be automatically converted. In addition, the new section states that should the applicability determinations and the basis for the determinations affecting a site remain unchanged, the permit holder is not required to submit an application for the GOP issued by the executive director. This will allow permit holders to avoid having to submit applications containing no new information.

Another area addressed by this proposed rulemaking is the Chapter 122 full program application schedule for GOPs. Under the full program, an owner or operator should have submitted an abbreviated initial permit application by February 1, 1998, for any site subject to the full program regardless of permit application type. Once the abbreviated permit application has been submitted, the remaining permit application information submittal then becomes specific to permit application type and Standard Industrial Classification (SIC) major grouping. Currently, §122.130(b)(2) indicates that

an owner or operator of a site subject to the full program and applying for a GOP should submit remaining permit application information by July 25, 1998, regardless of SIC major grouping. This requirement was written in the paragraph specifically for the §122.516 GOP developed for full program sites. The commission has determined, though, that owners or operators of some sites subject to the full program may be able to take advantage of a GOP developed for interim program sites. Owners or operators of these full program sites, however, have a deadline for submitting the remaining permit application information that is later than July 25, 1998. To allow the owners or operators of these full program sites to take advantage of a GOP and submit remaining permit application information at a date later than July 25, 1998, the phrase “for any site for which the applicant is applying for a general operating permit and” is proposed to be deleted from §122.130(b)(2).

Additionally, this proposed rulemaking includes changes to §122.134(b)(5) and §122.201(f) to maintain consistency with the proposed changes to Subchapter F. In §122.134(b)(5), the term “rescinded” is proposed to replace “repealed” due to a proposed change in the §122.504 title. Furthermore, the current §122.201(f) notes that the adoption of a GOP is not required to meet the requirements of §122.201. Since the proposed Subchapter F changes will create GOPs issued by the executive director, the phrase “issuance of a general operating permit by the executive director” is proposed to replace the phrase “adoption of a general operating permit.” The definition of Permit or Federal Operating Permit in §122.10 would be changed to refer to GOPs issued, renewed, or revised by the executive director. The definition of “General operating permit” would be revised to read that a GOP is one issued under Subchapter F.

The proposed rulemaking will provide new procedures for developing and maintaining future GOPs, but will not affect any current GOPs or any authorization to operate under them. It will also allow the owners or operators of certain sites subject to the full program to take advantage of the streamlined permitting mechanism offered by GOPs.

FISCAL NOTE

Mr. Stephen Minick, Strategic Planning and Appropriations, has determined that for the first five-year period the sections are in effect, there will be no significant economic costs for state or local government as a result of administration or enforcement of the sections. The commission does not expect any increase in costs for sites currently operating under Chapter 122.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be a more current set of applicable requirements in the general operating permits, which will result in a more effective compliance and enforcement tool. This is primarily an administrative action that proposes new procedures to be used by the executive director for the development of general operating permits. It does not add any new regulatory requirements to affected permit holders or potential permit holders, including those holders that may be small businesses.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking according to the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225. The proposal is administrative and

addresses internal procedures of the commission. It does not add any new regulatory requirements to affected industries. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state and is not a major environmental rule as defined in the Code.

As an alternate Federal Operating Permit mechanism, 40 CFR §70.6(d) allows for the use of General Permits. This alternate permitting mechanism is also allowed in Chapter 122. Section 122.110 authorizes the executive director to take action on any permit on behalf of the commission. This proposal does not exceed a standard set by federal law and is not specifically required by state law.

Texas Clean Air Act (TCAA), §382.051, authorizes the commission to issue permits, including permits for numerous similar sources. The use of General Permits is not specifically required by federal law and the proposed rules do not exceed an express requirement of state law.

This proposal does not exceed a requirement of delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program. No such agreement exists concerning the subject of this proposal.

This action is proposed under the specific statutory authority of TCAA, §382.051, which authorizes the commission to issue permits including permits for numerous similar sources. This action is not proposed under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this proposed rulemaking under Texas Government Code, §2007.043. The following is a summary of that assessment. The proposed rulemaking will allow the executive director to issue general operating permits and remove the requirement for general operating permits to be adopted by the commission through rulemaking. Promulgation and enforcement of the proposed sections will not be a burden on private real property because they do not place additional requirements on those required to obtain a federal operating permit. The proposed rulemaking will not make existing regulations less stringent. This rulemaking proposal is also an exempt action under Texas Government Code, §2007.003(b), since the commission is fulfilling its requirement to implement a federally mandated program.

COASTAL MANAGEMENT PLAN

The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies. The permits issued under Chapter 122, concerning Federal Operating Permits, do not

authorize the increase in air emissions nor do these permits authorize new air emissions. Interested persons may submit comments on the consistency of the proposed rule with the CMP goals and policies during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be held September 28, 1998, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98011-122-AI. Comments must be received by 5:00 p.m., October 5, 1998. For further information or questions concerning this proposal, contact Bruce McFarland of the Operating Permits Division, Office of Air Quality, (512) 239-1132.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the commission at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, the TCAA, §382.012, which provides the commission authority to develop a comprehensive plan for the state's air, §382.017, which provides the commission authority to adopt rules, §382.051(b)(2), which provides the commission authority to issue permits for numerous similar sources, and §382.054, which prohibits operation of a federal source of air pollution without a federal operating permit obtained from the commission.

The proposed amendment implements Texas Health and Safety Code, §382.012, concerning the State Air Control Plan, §382.017, concerning Rules, §382.051(b)(2), concerning Permitting Authority of Commission; Rules, and §382.054, concerning Federal Operating Permits.

SUBCHAPTER A : DEFINITIONS

§122.10

§122.10. General Definitions.

The definitions in the Texas Clean Air Act, Chapter 101 of this title (relating to General Rules), and Chapter 3 of this title (relating to Definitions) apply to this chapter. In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (6) (No change.)

(7) **General operating permit** - A permit [by rule] issued under Subchapter F of this chapter (relating to General Operating Permits), under which multiple stationary sources may be authorized to operate.

(8) - (9) (No change.)

(10) **Permit or federal operating permit** -

(A) (No change.)

(B) any general operating permit, or group of general operating permits,
issued, renewed, or revised by the executive director [adopted by the commission] under this chapter.

(11) - (22) (No change.)

SUBCHAPTER B: PERMIT REQUIREMENTS

DIVISION 3: PERMIT APPLICATION

§122.130, §122.134

STATUTORY AUTHORITY

The amendments are proposed under the Texas Health and Safety Code, the TCAA, §382.012, which provides the commission authority to develop a comprehensive plan for the state's air, §382.017, which provides the commission authority to adopt rules, §382.051(b)(2), which provides the commission authority to issue permits for numerous similar sources, and §382.054, which prohibits operation of a federal source of air pollution without a federal operating permit obtained from the commission.

The proposed amendments implement Texas Health and Safety Code, §382.012, concerning the State Air Control Plan, §382.017, concerning Rules, §382.051(b)(2), concerning Permitting Authority of Commission; Rules, and §382.054, concerning Federal Operating Permits.

§122.130. Initial Application Due Dates.

(a) (No change.)

(b) Full operating permit program.

(1) (No change.)

(2) The remaining application information [for any site for which the applicant is applying for a general operating permit and] for sites with the following primary SIC major groups shall be submitted by July 25, 1998 (for purposes of this section, each site shall have only one primary SIC code):

(A) - (H) (No change.)

(3) (No change.)

(c) - (d) (No change.)

§122.134. Complete Application.

(a) (No change.)

(b) Except as provided in subsection (c) of this section, a complete application for a permit shall include the following:

(1) - (4) (No change.)

(5) for the authorization to operate under a revised general operating permit, the information required by §122.504 of this title (relating to Application Revisions When a General Operating Permit is Revised or Rescinded [Repealed]).

(c) (No change.)

**SUBCHAPTER C : INITIAL PERMIT ISSUANCES, REVISIONS, REOPENINGS, AND
RENEWALS**

DIVISION 1: INITIAL PERMIT ISSUANCES

§122.201

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, the TCAA, §382.012, which provides the commission authority to develop a comprehensive plan for the state's air, §382.017, which provides the commission authority to adopt rules, §382.051(b)(2), which provides the commission authority to issue permits for numerous similar sources, and §382.054, which prohibits operation of a federal source of air pollution without a federal operating permit obtained from the commission.

The proposed amendment implements Texas Health and Safety Code, §382.012, concerning the State Air Control Plan, §382.017, concerning Rules, §382.051(b)(2), concerning Permitting Authority of Commission; Rules, and §382.054, concerning Federal Operating Permits.

§122.201. Initial Permit Issuance.

(a) - (e) (No change.)

(f) Neither the issuance [adoption] of a general operating permit by the executive director nor the granting of an authorization to operate under a general operating permit shall be required to meet the requirements of this section. General operating permits are subject to the requirements of Subchapter F of this chapter (relating to General Operating Permits).

(g) (No change.)

SUBCHAPTER F : GENERAL OPERATING PERMITS

DIVISION 1: PROCEDURAL REQUIREMENTS FOR GENERAL OPERATING PERMITS

§§122.501, 122.503, 122.504, 122.506, 122.508-122.510

STATUTORY AUTHORITY

The amendments and new sections are proposed under the Texas Health and Safety Code, the TCAA, §382.012, which provides the commission authority to develop a comprehensive plan for the state's air, §382.017, which provides the commission authority to adopt rules, §382.051(b)(2), which provides the commission authority to issue permits for numerous similar sources, and §382.054, which prohibits operation of a federal source of air pollution without a federal operating permit obtained from the commission.

The proposed amendments and new sections implement Texas Health and Safety Code, §382.012, concerning the State Air Control Plan, §382.017, concerning Rules, §382.051(b)(2), concerning Permitting Authority of Commission; Rules, and §382.054, concerning Federal Operating Permits.

§122.501. General Operating Permits.

(a) The executive director may issue [The commission may adopt by rule] a general operating permit for numerous similar stationary sources provided the following:

(1) - (3) (No change.)

(4) the requirements under §122.508 this title (relating to Notice and Comment Hearings for General Operating Permits) have been satisfied; and

(5) the requirements under §122.350 of this title (relating to EPA Review) have been satisfied_ [; and]

[(6) the adoption process is consistent with the Government Code, Administrative Procedure Act, Chapter 2001 or 2002.]

(b) General operating permits shall not be final until the requirements in [are subject to the requirements under] §122.360 of this title (relating to Public Petition) have been satisfied.

(c) (No change.)

(d) The executive director may revise or rescind any general operating permit issued by the executive director.

(1) The executive director may issue an administrative permit revision to a general operating permit provided the following:

(A) the change meets the criteria for an administrative permit revision in §122.211 of this title (relating to Administrative Permit Revisions); and

(B) the conditions of the general operating permit provide for compliance with the requirements of this chapter.

(2) The executive director may issue a minor permit revision provided the following:

(A) the change meets the criteria for a minor permit revision in §122.215 of this title (relating to Minor Permit Revisions);

(B) the conditions of the general operating permit provide for compliance with the requirements of this chapter; and

(C) the requirements of this chapter in §§122.509, 122.330, and 122.350 of this title (relating to Public Announcement for General Operating Permits; Affected State Review; and EPA Review) have been satisfied.

(3) The executive director may issue a significant permit revision provided the following:

(A) the change meets the criteria for a significant permit revision in §122.219 of this title (relating to Significant Permit Revisions);

(B) the conditions of the general operating permit provide for compliance with the requirements of this chapter; and

(C) the requirements of this chapter in §§122.506, 122.330, 122.508, and 122.350 of this title (relating to Public Notice for General Operating Permits; Affected State Review; Notice and Comment Hearings for General Operating Permits; and EPA Review) have been satisfied.

(4) A significant permit revision shall not be final until the requirements in §122.360 of this title have been satisfied.

[(d) The commission may amend or repeal any general operating permit under the Government Code, Administrative Procedure Act, Chapter 2001 or 2002.]

(e) The executive director shall make a copy of the [proposed] draft general operating permit accessible to the EPA.

(f) General operating permits must be renewed, consistent with the procedural requirements in subsection (a) of this section, at least every five years after the effective date.

§122.503. Application Revisions for Changes at a Site.

(a) The permit holder shall submit an updated application to the executive director for the following activities at a site:

(1) a change in [, addition, or removal of] any applicability determination [determinations] or the basis of any determination [determinations] in the [original] general operating permit application; or

[(2) a correction of typographical errors; or]

(2) [(3)] a change in the permit identification of ownership or operational control of a site where the executive director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the old and new permit holder is maintained with the permit.

(b) (No change.)

(c) If the following requirements are met, the change may be operated before a new authorization to operate is granted by the executive director:

(1) the permit holder complies with the following:

(A) (No change.)

(B) all applicable requirements; [and]

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title;

(2) the permit holder submits to the executive director the updated application
[information required in subsection (b) of this section] before the change is operated;

(3) the permit holder maintains, with the authorization to operate under the general
operating permit[,], the updated application [information required by subsection (b) of this section] until
the executive director grants a revised authorization to operate; and

(4) the permit holder operates under the representations in the updated application
[required by this subsection].

(d) The permit holder need not comply with the representations in the [original] application
that have been replaced by provisional terms and conditions before the granting of a new authorization
to operate.

(e) - (f) (No change.)

(g) If the emission units addressed in the application [authorization to operate] no longer meet the requirements for a general operating permit, the permit holder must submit a complete application for another operating permit.

(h) - (i) (No change.)

**§122.504. Application Revisions When a General Operating Permit is Revised or Rescinded
[Repealed].**

(a) If the applicability determinations or the bases for the determinations at a site change due to [This section applies if the permit holder's authority to operate under a general operating permit is affected by] the revision or repeal of an applicable requirement or state-only requirement or the revision or rescission of a general operating permit issued by the executive director, the following requirements apply [a rule].

_____(1) The permit holder shall [must] submit an updated application for the general operating permit containing at a minimum the following information:

_____(A) (No change.)

_____ (B) any changes in the [, additions, or removals of] applicability determinations;

(C) - (F) (No change.)

[(2) The application must be submitted by the effective date of the general operating permit.]

(2) [(3)] The permit holder shall comply with the following:

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions).

(3) [(4)] If the updated application is required as the result of the revision or repeal of an applicable requirement or state-only requirement, the [The] permit holder shall do the following:

[record the information required in paragraph (1)(A)-(E) of this subsection before the compliance date of the new requirement or effective date of the repealed requirement. The information in paragraph (1)(A)-(F) of this subsection shall be submitted no later than 45 days after the compliance date of the new requirement or effective date of the repealed requirement.]

(A) record the information required in paragraph (1)(A)-(E) of this subsection before the compliance date of the new applicable requirement or state-only requirement or effective date of the repealed applicable requirement or state-only requirement;

(B) submit an updated application for the general operating permit no later than 45 days after the compliance date of the new applicable requirement or state-only requirement or effective date of the repealed applicable requirement or state-only requirement; and

(C) [(5)] [The permit holder shall] maintain the information required in paragraph (1)(A) - (E) of this subsection with the authorization to operate until a new authorization is granted.

(4) If the updated application is required as the result of the revision of a general operating permit that is not based on a change in an applicable requirement or state-only requirement, the permit holder shall do the following:

(A) submit the updated application no later than 45 days after the issuance of the general operating permit; and

(B) maintain the updated application with the authorization to operate until the general operating permit is revised.

(b) The permit holder need not reapply for a revised general operating permit, provided the following:

(1) the emission units addressed in the application [authorization to operate] qualify for the revised general operating permit;

(2) (No change.)

(3) the basis for each applicability determination remain unchanged.

(c) If a general operating permit is rescinded [repealed] and not replaced, the authorization to operate under the general operating permit is revoked. The permit holder must apply for another operating permit no later than the date the general operating permit is rescinded.

(d) If as a result of [a permit holder's authority to operate under a general operating permit is affected by] the revision [or repeal] of a general operating permit [and] the permit holder no longer

qualifies for the general operating permit [or no longer intends to operate under the general operating permit], the permit holder must apply for another operating permit no later than the date of issuance [by the effective date of the revision or repeal] of the revised general operating permit.

(e) Those representations in the application not affected by the revision of a general operating permit remain conditions under which the permit holder shall operate.

(f) (No change.)

(g) The permit holder need not comply with the representations in the [original] application or the [original] terms and conditions codified in the general operating permit that have been replaced by provisional terms and conditions before the granting of a new authorization to operate.

§122.506. Public Notice for General Operating Permits.

(a) Before the issuance [adoption] of any general operating permit, the executive director shall publish notice of the opportunity for public comment and hearing on the [proposed] draft general operating permit [rule] consistent with the requirements of this section. The executive director shall publish notice of a draft general operating permit in the *Texas Register*, the commission's publicly accessible electronic media, and in a newspaper of general circulation within each of the following metropolitan areas: Beaumont, Houston, and Fort Worth. Additional notice may be provided, as determined by the executive director, in a newspaper of largest general circulation in the metropolitan

area appropriate for the draft general operating permit. The [In addition to the requirements of the Government Code, Administrative Procedure Act, Chapter 2001 or 2002, the] notice shall contain the following information:

(1) a description of the activities involved in the [proposed] draft general operating permit [rule];

(2) the location and availability of copies of the [proposed] draft general operating permit [rule];

(3) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a hearing;

(4) the notification that a person who may be affected by the emission of air pollutants from emission units that may be authorized to operate under the general operating permit is entitled to request a notice and comment hearing; and

[(4) the time, place, and nature of the hearing that will be held regarding the proposed draft general operating permit rule;]

[(5) a brief description of the purpose of the hearing that will be held regarding the proposed draft general operating permit rule; and]

(5) [(6)] the name, address, and phone number of the commission office to be contacted for further information.

(b) During the 30-day public notice comment period, any person who may be affected by emissions from emission units that may be authorized to operate under the general operating permit may request in writing a notice and comment hearing on a draft general operating permit.

(c) [(b)] The executive director shall make a copy of the [renewal application,] general operating permit [,] and any required notices accessible to the EPA and all local air pollution control agencies with jurisdiction in the counties that may be affected by the general operating permit.

(d) [(c)] The executive director shall make the [proposed] draft general operating permit [rule] available for public inspection throughout the comment period during business hours at the commission's central office.

(e) [(d)] The executive director shall receive public comment for 30 days after the notice of the public comment period is published. During the comment period, any person may submit written comments on the [proposed] draft general operating permit [rule].

(f) [(e)] The [proposed] draft general operating permit [rule] may be changed based on comments pertaining to whether the general operating permit provides for compliance with the requirements of this chapter.

(g) [(f)] The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action) [and the Government Code, Administrative Procedure Act, Chapter 2001 or 2002].

(h) [(g)] The executive director shall provide 30 days' advance notice of the hearing.

§122.508. Notice and Comment Hearings for General Operating Permits.

[(a) Before the adoption of any general operating permit, the executive director shall hold a notice and comment hearing regarding the proposed draft general operating permit rule.]

(a) [(b)] All hearings regarding general operating permits shall be conducted under the procedures in this section [according to the APA].

(b) Any person who may be affected by emissions from emission units that may be authorized to operate under the general operating permit may request that the executive director hold a hearing on a draft general operating permit.

(c) The executive director shall decide whether to hold a hearing. The executive director is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from emission units that may be authorized to operate under the general operating permit is determined to be unreasonable. If a hearing is requested by a person who may be affected by

emissions from emission units that may be authorized to operate under the general operating permit.
and that request is reasonable, the executive director shall hold a hearing.

(d) The executive director shall publish notice of a hearing on a draft general operating permit.
The notice must be published at least 30 days before the date set for the hearing. The notice must
include, at a minimum, the following:

_____ (1) the time, place, and nature of the hearing;

_____ (2) a brief description of the purpose of the hearing; and

_____ (3) the name and phone number of the commission office to be contacted to verify that
a hearing will be held.

_____ (e) At the executive director's discretion, the hearing notice may be combined with the notice
of the opportunity for public comment required by this subchapter.

(f) [(c)] Any person may submit oral or written statements and data concerning the [proposed]
draft general operating permit [rule].

(1) Reasonable time limits may be set for oral statements, and the submission of
statements in writing may be required.

(2) The period for submitting written comments is automatically extended to the close of the hearing.

(3) At the hearing, the period for submitting written comments may be extended beyond the close of the hearing.

(g) [(d)] A tape recording or written transcript of the hearing shall be made available to the public.

(h) [(e)] Any person who believes that any condition of the [proposed] draft general operating permit [rule] is inappropriate or that the preliminary decision to issue [adopt] the general operating permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

(i) [(f)] Any supporting materials for comments submitted under subsection (f) [(c)] of this section shall be included in full and may not be incorporated by reference, unless the materials are one of the following:

- (1) already part of the administrative record in the same proceedings;
- (2) state or federal statutes and regulations;

(3) EPA documents of general applicability; or

(4) other generally available reference materials.

(j) [(g)] The executive director shall keep a record of all comments and also of the issues raised in the hearing. This record shall be available to the public.

(k) [(h)] The [proposed] draft general operating permit rule may be changed based on comments pertaining to whether the [proposed] draft general operating permit [rule] provides for compliance with the requirements of this chapter.

(l) [(i)] The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action) [and the Government Code, Administrative Procedure Act, Chapter 2001 or 2002].

§122.509. Public Announcement for General Operating Permits.

(a) The public announcement requirements in this section apply to minor permit revisions to general operating permits.

(b) The executive director shall publish an announcement of a draft general operating permit for a minor permit revision to a general operating permit on the commission's publicly accessible electronic media. The announcement shall contain the following:

(1) the location and availability of the following:

(A) the draft general operating permit;

(B) all other relevant supporting materials in the public files of the commission;

(2) a description of the comment procedures, including the duration of the public announcement comment period; and

(3) name, address, and phone number of the commission office to be contacted for further information.

(c) The executive director shall make a copy of the public announcement and date of publication accessible to the EPA and all local air pollution control agencies with jurisdiction in the counties that may be affected by the general operating permit.

(d) The executive director shall furnish a notice of the public announcement to any air pollution control agency of any affected state.

(e) The executive director shall make the draft general operating permit available for public inspection throughout the comment period during business hours at the commission's central office (and at the commission's regional office where the site is located).

(f) The executive director shall receive public comment for 30 days after the announcement of the draft general operating permit is published. During the comment period, any person may submit written comments on the draft general operating permit.

(g) The draft general operating permit may be changed based on comments pertaining to whether the general operating permit provides for compliance with the requirements of this chapter.

(h) Public notice requirements for general operating permits satisfy public announcement requirements.

(i) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).

§122.510. General Operating Permits Adopted by the Commission.

(a) Any general operating permit in this subchapter adopted by the commission shall remain in effect until it is repealed under the APA.

(b) Any authorization to operate under a general operating permit in this subchapter adopted by the commission that is replaced with a general operating permit issued by the executive director shall be automatically converted to an authorization to operate under the general operating permit issued by the executive director. Provided the applicability determinations and the bases for the determinations affecting a site remain unchanged, the permit holder is not required to submit an application for the general operating permit issued by the executive director.